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Volkswagen of America, Inc.



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February 8, 2002

The Honorable Jeffrey Runge, M.D.
Administrator
National Highway Traffic Safety Administration
Docket Management
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RE: Docket No. NHTSA 2001-11108; Notice of Proposed Rulemaking (NPRM), Motor Vehicle Safety; Acceleration of Manufacturer's Remedy Program, Notice 1

Dear Dr. Runge:

Volkswagen AG, Audi AG, and Volkswagen of America, Inc. (collectively, the "Volkswagen Group") respectfully submit these comments regarding the above-mentioned Notice of Proposed Rulemaking issued on December 11, 2001 (66 Fed.Reg. 64087) (hereinafter "NPRM").

The Volkswagen Group is a full member of the Alliance of Automobile Manufacturers ("Alliance"). Volkswagen has participated in the comments submitted hereto separately by the Alliance and fully supports that submission to the docket for this NPRM.

The Volkswagen Group is the largest European automobile manufacturer. It markets and distributes motor vehicles worldwide under numerous brand names, including Volkswagen, Audi, Seat, Skoda, Rolls-Royce, Bentley, and Lamborghini. The Volkswagen Group maintains manufacturing facilities in numerous countries, and exports motor vehicles and motor vehicle parts into approximately 160 countries worldwide. The Volkswagen Group has no financial or ownership interest in most of the importers of these motor vehicles.

Volkswagen Group products are imported into the United States by Volkswagen of America, Inc. ("VWoA"), a New Jersey corporation; Rolls-Royce & Bentley Motor Cars, Inc., a Delaware corporation; and Lamborghini S.p.A., an Italian corporation. Volkswagen brand products imported into the United States originate in Germany, Brazil, and Mexico. Audi brand products imported into the United States originate in Germany and Hungary. Rolls-Royce and Bentley brand products imported into the United States originate in the United Kingdom. Lamborghini brand products imported into the United States originate in Italy.

Adding Assembly Lines or Shifts

As a preliminary matter, we wish to make clear that we are committed to carrying out any recall in a timely manner and will work with NHTSA to take all measures reasonably necessary to do so.

Volkswagen is concerned, however, with NHTSA's assertion of authority "if warranted under the circumstances" to "require a manufacturer to add additional suppliers and/or production lines and/or production shifts in order to increase the number of available remedy parts" (*see* 66 Fed.Reg. at 64089). To the extent that non-U.S. plants are affected, a foreign government or any other interested foreign constituents may view the U.S. order as an unreasonable incursion into foreign sovereign domains. While Volkswagen is sensitive to the need that foreign based plants are treated the same as domestic plants, the Agency needs also to be sensitive to the implications of its rulemaking actions for foreign sovereign entities. The Volkswagen Group finds this proposed language too wide in scope and not even necessary for the agency to discharge its mandate of implementing Section 6(a) of the TREAD Act. In addition, the proposed regulation may be impossible for us to comply with for a variety of very practical reasons.

1. NHTSA Should Consider International Implications of Accelerated Production Lines and/or Production Shifts Located Outside the United States

Manufacturers outside the U.S. are facing a genuine dilemma. On the one hand, there are basic international obligations that have to be observed. But on the other hand, non-U.S. companies should not have to carry a lesser burden than domestic companies.

The language of the NPRM is not limited to production lines and/or production shifts located in the United States. The Volkswagen Group believes that the assertion by the NHTSA of regulatory authority over plants and/or factories located overseas is fraught with legal uncertainty and requests that NHTSA clarify in the Final Rule that the scope of the rule is only meant to cover those production lines and/or production shifts located in the United States.

An order affecting a foreign factory or plant would constitute an interference with the sovereignty of the country in which those manufacturing operations function. Any assertion by NHTSA of extraterritorial jurisdiction over plants located abroad would run the risk of triggering a legal response by those affected countries. In the past, foreign countries have frequently responded to extraterritorial assertions by passing "claw-back" or "blocking" legislation. In effect, "claw-back" or "blocking" legislation mandates that the overseas domestic companies NOT comply with U.S. law. One famous example of "claw-back" or "blocking" legislation is the British Protection of Trading Interests Act of 1980. The U.K. passed this law in response to extraterritorial assertions made by the U.S. pursuant to U.S. anti-trust law (Sherman Act). Under this law, U.K. courts may decline to enforce a U.S. government order if the U.S. order "infringes the jurisdiction of the United Kingdom or is otherwise prejudicial to the sovereignty of the United Kingdom" (*see* Arti-

cle 4 of the Act). Another possible response is that a foreign country may pass “copy-cat” legislation. For example, it is conceivable the British government might pass a law that is designed to mimic the U.S. law with respect to U.S.-built vehicles sold there. Accordingly, the British law could require U.S. plants to shut down shifts to comply with a British “acceleration remedy” law. It is doubtful that the U.S. government would accept a foreign order mandating production shifts in a plant located in Michigan. Yet, as currently worded, this is exactly the scenario contemplated by the NPRM with respect to plants and factories located outside the United States.

Should NHTSA not limit the scope in the Final Rule, the Volkswagen Group would urge NHTSA to consult with United States Trade Representative and State Department in order to apprise both of the possible implications and responses by foreign governments.

From a purely legal standpoint, NHTSA’s proposal ignores labor agreements in effect in the countries of production. For example, in our case, some labor agreements restrict the hiring of temporary employees, preclude purchasing parts from outside sources (outsourcing), and limit the amount of overtime. Further, labor contracts in plants and factories located in Germany require the explicit prior agreement of the union before a manufacturer may add shifts. This agreement is mandatory pursuant to German labor law. Accordingly, union agreement is a necessary precondition to any such change to production shifts. Finally, union consent is also a necessary precondition before any individual union member may work in a different area or undertake different responsibilities than those previously agreed to in the union contract. All these factors further support NHTSA explicitly limiting the scope to “production lines and/or production shifts located in the United States or manufacturing for sale in the United States.”

2. Practical Problems with Adding Assembly Lines

In addition to the problems mentioned above, the VW Group has identified at least two overarching practical problems with the concept of adding assembly lines.

First, installing an additional production line on short notice is nearly impossible. We do not have the ability to simply install an additional shift while allowing other operations to continue uninterrupted or unimpaired. Plants and factories are not equipped with extra machinery for use on “stand-by.” Further, manufacturers do not have a labor pool that can be diverted from its current task to a new line of production: NHTSA incorrectly presupposes that no training is required or that training can be accomplished quickly “on the spot.”


Second, shutting down a production line that is dedicated to normal production requirements would mean curtailing production or stopping production completely for certain models. Models that cannot be equipped with parts cannot be properly built, delivered, or sold. The inability to produce means the inability to purchase other compo-

nents pursuant to existing supply agreements and the inability to supply finished products to others, which hurts third parties as well as the manufacturer.

Conclusion

In addition to these comments, the Volkswagen Group supports the comments submitted separately by the Alliance. We have filed comments separately to highlight issues of special importance to the Volkswagen Group. We appreciate and welcome the opportunity to comment on NHTSA's Remedy Acceleration NPRM. Should you have any questions, please feel free to contact me. Thank you for considering our comments.

Respectfully submitted,


Joseph Kennebeck

cc: Kenneth N. Weinstein, Esq.
Associate Administrator for Safety Assurance